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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 LIZETTE GALVAN, on behalf of herself,)
12 and on behalf of all persons similarly)
situated,)

13 Plaintiff,)

14 v.)

15 SEARS HOLDING CORPORATION, *et*)
16 *al.*,)

17 Defendants.)
_____)

Civil No. 12cv444 L(MDD)

**ORDER STRIKING PLAINTIFF'S
"FIRST AMENDED CLASS ACTION
COMPLAINT" [doc. #10]**

18 On January 17, 2012, plaintiff, individually and on behalf of all others similarly situated,
19 filed a complaint in the Superior Court of the State of California, in and for the County of San
20 Diego. On January 23, 2012, plaintiff filed an amendment to the complaint to correctly name as
21 a defendant, Sears Holdings Management Corporation. Under California Code of Civil
22 Procedure § 473, a court order is required to add or correct a name. (Notice of Removal, Exh. A-
23 10.)

24 The two defendants named in the amended complaint, Sears Holdings Management
25 Corporation and Sears, Roebuck and Co., removed the action on February 21, 2012, based upon
26 the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1332(d), and 28 U.S.C. § 1441(a).

27 On February 27, 2012, plaintiff filed a "First Amended Class Action Complaint." Federal
28 Rule of Civil Procedure 15 provides in relevant part:

1 A party may amend its pleading once as a matter of course within:

2 (A) 21 days after serving it, or

3 (B) if the pleading is one to which a responsive pleading is required, 21
4 days after service of a responsive pleading or 21 days after service of a
motion under Rule 12(b), (e), or (f), whichever is earlier.

5 (2) Other Amendments. In all other cases, a party may amend its pleading only
6 with the opposing party's written consent or the court's leave. . . .


7 Fed. R. Civ. P. (A)(1)-(2)

8 It has long been established that federal procedural laws govern all proceedings in the
9 adjudication of an action in federal court. *Erie Railroad Co. v. Tompkins*, 304 U.S. 64, 78
10 (1938). In the present case, plaintiff filed an amended complaint in the state court prior to
11 removal of the action; therefore, plaintiff may file another amended complaint in the federal
12 court only by obtaining the written consent of defendants or by seeking leave of court.

13 Based on the foregoing, plaintiff's "First Amended Complaint" filed February 27, 2012
14 [doc. #10], is **STRICKEN** from the record.

15 **IT IS SO ORDERED.**

16 DATED: March 1, 2012

17 
18 M. James Lorenz
United States District Court Judge

19 COPY TO:

20 HON. MITCHELL D. DEMBIN
21 UNITED STATES MAGISTRATE JUDGE

22 ALL PARTIES/COUNSEL
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